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PART-III-A – Ordinances promulgated by the Governor of Tripura under the Constitution of India.

GOVERNMENT OF TRIPURA
LAW DEPARTMENT
SECRETARIAT : AGARTALA

No. F. 8(8)- Law/Leg-I/2019/6967 Dated, Agartala, the 5th August, 2019.

NOTIFICATION

The following Ordinance is promulgated by the Governor of Tripura on the 3rd August, 2019 and is hereby published for General information.

D.M.Jamatia
L.R. & Secretary, Law
Government of Tripura

The Tripura Ordinance No.2 of 2019.

THE TRIPURA ELECTRICITY DUTY ORDINANCE, 2019

AN

ORDINANCE

Promulgated by the Governor of Tripura in the seventieth year of the Republic of India.

An Ordinance to provide for the levy of a duty on consumption of electrical energy in the State of Tripura and the matters connected therewith and incidental thereto.

WHEREAS it is felt expedient to levy a duty on the sale or consumption of electrical energy in the State of Tripura,

AND

WHEREAS the Legislative Assembly of Tripura is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action,

NOW, THEREFORE, in exercise of the power conferred by clause (1) of Article 213 of the Constitution of India, Governor of Tripura, is pleased to promulgate the following Ordinance:

1. Short Title, extent and commencement:

(1) This may be called the "Tripura Electricity Duty Ordinance, 2019".

(2) It shall come on and from the date of its publication in the Tripura Gazette.

2. Definitions:

In this Ordinance, unless the context requires otherwise,-

(1) "assessee" means a person or licensee by whom duty or any other sum of money is payable under this ordinance and includes in respect of whom any proceeding under this ordinance has been taken for the assessment of duty payable by him;

(2) "assessing authority" means an officer authorised to make any assessment under this Ordinance.

(3) "commissioner" means any person appointed by the State Government to be a Commissioner of Electricity Duty;

(4) "consumer" means any person who is supplied with energy on payment of charges or otherwise by a licensee or by any other person who generates energy;

(5) "corporation" means the Tripura State Electricity Corporation Limited;

(6) "electricity duty" means a duty levied under clause 4 of this Ordinance;

(7) "energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message;

(8) "inspecting officers" means an officer appointed under this Ordinance and also includes the Commissioner of Taxes;

(9) "licensee" means a person licensed under the Electricity Act, 2003, to supply energy and includes any person who has obtained the sanction of the State Government under section 14 of that Act, the State Government when it is engaged in a business of supplying energy, the generating company as defined in sub-section (28) of section 2 of the Electricity Act, 2003 and the State Electricity Board/Corporation constituted before the commencement of the Electricity Act, 2003, under section 5 of the Electricity (Supply) Act, 1948;

(10) "month" means a calendar month or part thereof;

(11) "person" for the purpose of this Ordinance, includes—

(a) an Individual;

(b) a Hindu Undivided Family;

(c) a Company;

(d) a Firm;

(e) a Limited Liability Partnership;

(f) an Association of Persons or a Body of Individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government Company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) anybody corporate incorporated by or under the laws of a country outside India;

(i) a Co-Operative Society registered under any law relating to Co-Operative Societies;

(j) a Local Authority;

(k) Central Government or a State Government;

(l) Society as defined under the Societies Registration Act, 1860;

(m) Trust; and

(n) every artificial juridical person, not falling within any of the above;

(12) "prescribed" means prescribed by the rules made under this Ordinance;

(13) "year" means a period of twelve months, commencing on the first day of April of the year and ending on the last day of March of subsequent year.

3. Registration:

(1) A licensee or a person, who generates and sales electricity in any non-conventional mode as prescribed in clause 4(4)(c) of this Ordinance, shall, within such date as may be notified by the

Government obtain registration from Inspecting Officer having jurisdiction over such licensee or person.

(2) Application for registration shall be made in such manner and in such form, as may be prescribed.

(3) The Inspecting Officer may, on receipt of an application and after such enquiry as he considers necessary, grant to the applicant a certificate of registration.

4. Levy of electricity duty:

(1) There shall be levied and paid to the State Government a duty, to be called the "electricity duty", at the rate as prescribed by the Commissioner with the approval of the State Government by Notification from time to time in the official gazette on the aggregate value of energy charges and fixed charges.

(2) Levy of electricity duty on sales of energy by licensees:

(a) every licensee in the State of Tripura shall pay in the prescribed manner at the rate as notified under sub-clause (1) on the aggregate value of energy charges and fixed charges within and outside the State;

(b) when a licensee has more than one licences duty shall be calculated and levied under this clause separately in respect of each license;

(3) Levy of electricity duty on consumers-

Every consumer belonging to any of the classes, shall pay a duty every month to the Government in the prescribed manner at the rate as notified under sub-clause (1) on the aggregate value of energy charges and fixed charges of energy consumed on the basis of consumption measured (meter reading) as mentioned in sub-clause (5)or energy sold based on scheduled energy as per CERC/TERC norms;

Provided, it shall be competent for the Government either to reduce the rate at which duty is leviable on such consumer or to exempt such consumer from payment of duty subject to such

terms & conditions that may be imposed in lieu of public interest.

(4) Duty shall also be levied on-

(a) electricity consumed by or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of any railway by that Government of India or a railway company operating that railway or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway; or

(c) electricity generated and sold through non-conventional mode of energy generation (viz. solar units, windmill, etc.), in case the aggregate annual generation exceeds such units as may be prescribed; or

(d) electricity sold outside the State and licensees shall have to pay electricity duty on sold energy charges.

(5) (a) For the purpose of computing the electricity duty under this clause, the consumption, shown in the meters or any other method to compute the energy sold based on scheduled energy as per CERC/TERC norms shall be taken into account.

(b) For the purpose of sub-clause (a), the computing shall be started from the starting of the billing period immediately after the commencement of this Ordinance.

5. Collection and Payment of Electricity Duty levied on Consumers:

(1) Every licensee shall collect and pay to the Government at the time and in the manner prescribed on the basis of the aggregate value of energy charges and fixed charges of energy consumed computed through consumption measured (meter reading), the electricity duty payable under clause 4 of this Ordinance by every consumer to whom energy is supplied by him. The duty so payable shall be first charged on the amount recoverable by the

licensee for the energy supplied by him and shall be a debt due by him to the State Government.

(2) When any consumer fails or neglects to pay at the time and in the manner prescribed, on the basis of the aggregate value of energy charges and fixed charges of energy consumed, the amount of electricity duty due from him, the licensee may, without prejudice to the right of the Government to recover the amount under clause 9, after giving not less than seven clear days' notice in writing to such consumer, cut off supply of energy to such consumers and he may, for that purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910, for the recovery of any charge or sum due in respect of energy supplied by him.

(3) The State Government or an officer authorized by the State Government, by Notification in this behalf, may, in respect of any consumer,-

(a) Extend the date of payment or allow him to pay electricity duty by installments in such manner and on such conditions as may be prescribed;

(b) allow deferment of payment of electricity duty under such circumstances, on such conditions and for such period not exceeding five years in aggregate, if deferment is allowed for hundred per cent. of the payment liability of electricity duty and not exceeding seven years in aggregate, if deferment is allowed for fifty per cent. of the payment liability of electricity duty as may be prescribed.

6. Licensee etc. to keep books of account, records and submit returns:

(1) A licensee or a person engaged in sale or distribution of energy, shall maintain such record and in such form and manner as may be prescribed, showing –

(a) the units of energy generated or sold or received by it for supply to the consumer;

(b) the units of energy supplied to the consumer or consumed by it;

(c) the aggregate value of energy charges and fixed charges received during the period on which duty is payable;

(d) the amount of the duty payable thereon and the duty paid or recovered by him under this Ordinance; and

(e) such other particulars as may be prescribed.

(2) The Board/Corporation, the licensee, or the person distributing energy who has been directed under sub-clause (1) to maintain a record shall submit such return, in such form and manner and to such authority as may be prescribed.

(3) The amount of energy shall, for purpose of para (a) and (b) of sub-clause (1), be ascertained in such manner as may be prescribed.

7. Assessment:

(1) If no returnin respect of any period is submitted by the Board/Corporation, licensee or the person required to submit return under clause 6 or if the return submitted by such Board/ Corporation, Licensee or Person appears to the inspecting officers to be incorrect or incomplete, such authority shall, after giving such Board/Corporation, Licensee or Person, as the case may be, a reasonable opportunity of being heard, proceed to assess to the best of his judgement the amount of electricity duty payable under this Ordinance by such Board/Corporation, Licensee or Person.

(2) No assessment under this clause shall be made after the expiry of five years from the end of the return periods to which the assessment relates.

8. Inspecting officers:

(1) The State Government may, for carrying out the purposes of this Ordinance, appoint the Commissioner, and such other persons to assist him as it thinks fit,by notification in the Official Gazette.

(2) Powers of Inspecting Officers: The Inspecting officers shall perform such duties and exercise such powers as may be prescribed for the purpose of carrying into effect the provisions of this Ordinance and rules made thereunder.

Subject to the provisions of any rules made by the State Government in this behalf, an Inspecting officer may-

(a) require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity duty leviable under the Ordinance;

(b) enter and search any premises where energy is, or is believed to be supplied for the purpose of-

(i) verifying the statements made in the books of account kept, and returns submitted, under clause 6,

(ii) testing the reading of meters,

(iii) verifying the particulars required in connection with the levy of electricity duty;

(c) exercise such other power and perform such other duties as may be necessary for carrying out the purposes of this Ordinance or the rules made there under.

All searches made under clause (a) & (b) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

9. Recoveries:

(1) Any sum due on account of electricity duty, if not paid at the time and in the manner prescribed, shall be deemed to be in arrears, and thereupon such interest (not exceeding, 24 percent per annum) which the State Government may by general or special order fix, shall be payable on such sum; and the sum together with any interest thereon, shall be recoverable as an arrear of land revenue.

(2) Where any sum due on account of electricity duty is collected by the licensee or person but not paid to the State Government within a period of thirty days from the due date of payment thereof, such licensee or person shall also be liable to pay penalty on such sum (not exceeding 12 percent per annum) as the State Government may, by general or special order fix and the sum together with interest and penalty shall be recoverable as an arrear of land revenue.

(3) Where any sum due on account of electricity duty is paid by the consumer but the interest due thereon is not paid by such consumer within six months from the date of such payment, such consumer shall also be liable to pay penalty (not exceeding 12 percent per annum) on such sum as the State Government may, by general or special order fix and such sum together with interest and penalty shall be recoverable as an arrear of land revenue.

(4) Where the consumer or, as the case may be, the licensee is liable to pay electricity duty, penalty, interest and he makes payment of an amount which is less than the aggregate of the amount of electricity duty, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance if any, towards the amount of electricity duty.

(5) The State Government may, by general or special order, waive the whole or any part of interest or penalty under this clause in such circumstances, on such terms and conditions and for such period as may be prescribed.

10. Interest:

(1) Every person who is liable to pay duty in accordance with the provisions of this Ordinance or the rules made thereunder, but fails to pay the duty or any part thereof to the Government within the period prescribed, shall for the period for which the duty or any part thereof remains unpaid, pay, on his own, interest at the rate one and half percent per month.

(2) Every person who is in default or is deemed to be in default in

making the payment of duty as assessed under clause 7 he will be liable to pay interest at the rate one and half percent per month from the date of such default for so long as he continues to make default in the payment of the said duty.

(3) The State Government shall, in the prescribed manner pay an interest at the rate one and half percent per month of delay in making refund to any person the amount of duty paid in excess which arises from an order under clause 7 or clause 13 or clause 14 passed on assessment or appeal or revision, as the case may be, by the prescribed authority from the first day of the month next following the expiry of three months from the date of such order upto the month preceding the month in which refund is made, upon the amount of duty refundable to him according to such order

11. Penalties:

If any person-

(1) fails to keep books of account or to submit returns in accordance with the provisions of clause 6 and the rules made in that behalf under clause 18, or

(2) Wilfully obstructs an Inspecting officer in the exercise of the powers conferred upon him by or under this Ordinance,-

he shall, on conviction, be punished with fine which may extend to ten thousand rupees.

12. Different Authorities and Officers under this Ordinance:

The Authorities and Officers prescribed under the Tripura Value Added Tax Act, 2004 shall be the ex-officio authorities under this Ordinance.

13. Appeal:

(1) Any person may in the prescribed manner appeal to the prescribed authority against any order of assessment of electricity duty or any other order passed under this Ordinance or the Rules

made thereunder within sixty days from the date of receipt of a notice of demand issued after such order of assessment:

Provided that no appeal against an order of assessment or any other order passed under this Ordinance shall be entertained by the prescribed authority unless he is satisfied that fifty percent of amount of duty assessed, fifty percent of interest and penalty levied have been paid.

(2) Subject to such rules of procedure as may be prescribed, the prescribed authority, in disclosing of any appeal under sub-clause (1), may–

(a) confirm, modify or annul the assessment of electricity duty or any other order, as the case may be; or

(b) set-aside the assessment of electricity duty or any other order, as the case may be and direct the authority concern to make a fresh assessment or pass a fresh order after such further enquiry as may be directed or pass an order of refund of such excess duty paid by the person.

14. Revision:

(1) The prescribed authority may call for and examine the record of any proceeding under this Ordinance and if he considers that any order pass therein by any inspecting / assessing / appellate authority is erroneous in so far as it is pre-judicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary pass such orders thereon as the circumstances of the case justify.

(2) Any person objecting to an order passed under clause7 or clause 13 or any other order passed by any authority subordinate to the Commissioner may apply for revision of such order to the prescribed authority within sixty days from the date of receipt of the order of the appellate authority or assessing authority, as the case may be.

Provided that no petition for revision by any person shall be admitted by the Commissioner unless fifty percent of the amount of duty assessed, fifty percent of the amount of interest and penalty levied have been paid by the person preferring revision before the Commissioner.

(3) The Commissioner shall not revise any order under this clauses in the following cases:

(a) Where an appeal against the order lies under clause 13 but has not been made and the time within which such appeal may be made has not expired; or

(b) Where the order is pending on appeal under clause 13.

15. Offences and penalties:

Whoever,-

(a) being liable to pay duty under this Ordinance, does not get himself registered;

(b) fails to keep true and proper record or knowingly prepares or produces incorrect record;

(c) fails to submit return, without any reasonable cause or submits a false or incorrect return;

(d) fails to pay duty in accordance with the provision of the Ordinance or fails to deposit any demand under the provision of the Ordinance;

(e) intentionally obstructs an inspecting officer in the exercise of his powers and duties under this Ordinance and the rules made thereunder; or

(f) wilfully evades or attempts to evade duty leviable under this Ordinance;

(g) wilfully acts in contravention of any provision of this Ordinance or the rules made thereunder,-

shall, in addition to his liability to pay duty and other dues payable by him under this Ordinance, be liable to pay a penalty not exceeding hundred and fifty percent of the duty payable but shall not be less than ten percent of it.

16. Offences by Companies:

(1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-clause shall render any such person liable to any punishment provided in this Ordinance if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-clause (1), where an offence under this Ordinance has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this clause -

(a) "Company" – means a body corporate and includes a firm or other association of individuals, and

(b) "Director" in relation to a firm means a partner in the firm.

17. Power to exempt:

(1) The Government may in public interest, by Notification in the Gazette exempt any Licensee from the payment of the whole or

part of the electricity duty for such period and subject to such terms and conditions as may be specified in such Notification.

(2) The Government may by Notification in the Gazette, exempt any consumer from the payment of the whole or any portion of the electricity duty payable on energy generated and consumed by him during periods when there is failure of supply of energy by the licensee or there is only a restricted supply of energy by the licensee, as the case may be.

18. Power to make Rules:

(1) The Government may make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the time and the manner of payment of electricity duty under clause 5,

(b) the point at which, and manner in which, a meter shall be installed as required by clause 5,

(c) the form of the books of account required to be kept under clause 6,

(d) the times at which, the form in which, and the officers to whom, the returns required by clause 6 should be submitted;

(e) the duties and powers of inspecting officers appointed under clause 8, and

(f) any other matter for which there is no provision or insufficient provision in this Ordinance and for which provision is, in the opinion of the Government, necessary for giving effect to the purpose of this Ordinance.

(3) In making a rule under sub-clause (1) or sub-clause (2) the Government may provide that a breach thereof shall be punishable with fine not exceeding ten thousand rupees.

(4) Every rule made under this Ordinance and every Notification issued by the Government under this Ordinance shall be laid, as soon as may be after it is made.

19. Protection of Action taken in good faith:

No suit, prosecution or other legal proceedings shall be against any person for anything which in good faith, done or intended to be done under this Ordinance.

20. Automation:

(1) The Government shall endeavour to introduce and establish an automated data processing system for complementing the purposes of the Ordinance and for incidental and allied matters.

(2) In order to make the said system effective, the Government may from time to time make regulations for regulating the interactions between the dealers, authorities appointed or constituted under the Ordinance and the Government Treasury.

21. Removal of Difficulties:

(1) If any difficulty arises in giving effect to any provisions of this Ordinance, the Government may, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

(2) Every order made under this clause shall be laid, as soon as may be, after it is made, before the State Legislature.

-Sd/-
SRI RAMESH BAIS
Hon'ble Governor of Tripura